

## **REG-33-003 COMMENCEMENT OF PROCEEDINGS: GENERAL**

003.01 These rules shall be followed by a petitioner filing a petition with the Department of Revenue.

003.01A Request for oral hearing. A protest petition, request for redetermination of a property valuation assessment, or a request for a declaratory ruling, or the promulgation, amendment or repeal of a regulation, revenue ruling, or form shall be presumed to be a request for an oral hearing unless the petitioner specifically states that he does not desire an oral hearing. A claim for refund or request for redetermination of a disapproved tax application, waiver of penalty, or situs between two counties shall not be presumed to be a request for an oral hearing. The Tax Commissioner shall grant a taxpayer or his authorized representative an opportunity for an oral hearing if the taxpayer so requests. In this latter case, the request for an oral hearing should be made at the time of filing the claim for refund or request for redetermination. For example, the following language will be considered a request for an oral hearing on a claim for refund: "Before any denial of this claim for refund, an oral hearing is requested."

003.01B Amendment of petition. A petitioner may at any time up to or during the proceeding amend his petition. The request to prepare or receipt of an amended petition shall be considered good cause for a continuance and the Hearing Officer, on his own motion or on the motion of any of the parties, may continue the hearing. If a continuance is granted, a copy of such order will be directed to all parties.

003.01C Joinder of parties. If Notices of Proposed Deficiency Determinations are mailed to a number of persons, based on similar or identical legal grounds, they may not join in filing one protest petition, except where a joint Notice of Proposed Deficiency Determination is sent to parties who filed a joint return; however, a Motion for Consolidation may be considered after the protest petitions have been filed. Parties may be joined with the approval of the Commissioner under any of the other types of proceedings.

003.01D Filing date. A petition is considered filed with the Commissioner on the date that it is received by the Commissioner, or if delivered by the United States Mail after the due date, the petition is considered filed with the Commissioner on the date of the postmark of the United States post office stamped on the envelope. Postmarks made by other than the United States post office will not be accepted as conclusive evidence of the filing date of any petition received after the due date. When the last day for filing falls on Saturday, Sunday, or an approved holiday, the filing will be considered timely if received on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. The period fixed by statute within which to file a petition cannot be extended. If a petition is not filed within the statutory period, it will not be considered by the Commissioner but will be returned certified mail, return receipt requested.

(Sections 3-149, 57-712, 66-410.06(2), 66-418(2), 66-440, 66-623, 66-629, 77-1201, 77-2105, 77-2776, 77-2795, 77-27,135, 77-27,147, 77-3006, and 84-909, R.R.S. 1943. Sections 77-601, 77-602, 77-624, 77-2612, 77-2711(1)(a), 77-27,119, and 77-27,125 R.S.Supp., 1985. January 26, 1986.)